INDEX

Brief in Opposition 1
Argument. 4
Response to Questions . . 5
Conclusion and Prayer 8
Certificate 10

List of Authorities

Clark vs. Paul, Inc.,
306 U.S. 583, 59 S.Ct. 744,
83 L.Ed. 1001 (1939) 5

Hammonds vs. City of Corpus Christi, Texas,
343 F2d 162 (5th Cir. 1965). 4,6,7,8,9

Harmon vs. Superior Court of State of California in and for Los Angeles County,
307 F2d 796 (9th Cir. 1962). 5

Incorporated Committee of City of Hills and Dales, Texas, Victor Engel, Helotes, et al. vs. Gerald Henckel, City of San Antonio,
Civil No. SA 71 CA 206,
January 12, 1972, Civil
No. 72-1652 (5th Cir.
1972). 4,6,7,8

Pan American Production Co. vs. Texas City,
303 S.W.2d 780 (Tex.Sup.Ct.
1957 9

Skokomish Indian Tribe vs. France,
269 F2d 555 (9th Cir. 1959). 4

Stanturf vs. Sipes,
335 F.2d 224 (8th Cir. 1964)
cert. denied 85 S.Ct. 676,
379 U.S. 977, 13 L.Ed. 567
(1964) 4

U. S. vs. Constantine,
296 U.S. 287, 299 (1935) . . 8

U. S. vs. Causby,
66 S.Ct. 1062 (1946) 6

U. S. vs. C. M. Dow,
357 U.S. 17, 78 S.Ct. 1039 . 6

Treatise:

W. Barron, A. Holtzoff, & C.
Wright,
Federal Practice and Procedure,
§25, at 123 4

Statutes:

28 U.S.C. 1254 2
28 U.S.C. 1346, 2201, 2674 . 2
42 U.S.C. §1983 2

U. S. Constitution:

Amendments 5 & 14 2

IN THE

SUPREME COURT

OF THE UNITED STATES

October Term, 1975

JOE CHACON, JR., ET AL.,

Petitioners

VS.

SAM GRANATA, CITY OF SAN ANTONIO,

RANDOLPH AIR FORCE BASE,

Respondents

ON PETITION FOR A
WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR
THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT

IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (App. of Petitioners A-14 - A-21) is unreported. The opinion of the Court of Appeals for the Fifth Circuit, (App. of Petitioners A-1 - A-12) is reported at 515 F2d 922.

JURISDICTION

Respondents admit that jurisdiction is alleged pursuant to 28 U.S.C.A. §1254(1), but deny that a substantial constitutional basis exists for jurisdiction.

QUESTIONS PRESENTED

(1) Does a Right Exist to Sue the U. S. Air Force for Damages?

(2) Must Zoning be Completed after Annexation before a Remedy exists in the Courts?

(3) Does the City have the right to Annex without approval by the Voters?

STATUTORY PROVISIONS ALLEGED

42 U.S.C. 1983, 28 U.S.C. 1254 (1)
28 U.S.C. 1346, 2201, 2674
Constitutional Amendments 5 and 14.

RESPONSE TO PETITIONERS' STATEMENT OF THE CASE

Respondents feel compelled to clarify some of the statements made by the Petitioners under their statement of the case.

Respondents deny that the City was coerced or threatened by Randolph Air Force Base to annex the property and zone it in order to avoid condemnation of an interest in Petitioners' land or payment of damages for "taking of an interest" in the land.

While it is true that Randolph Air Force Base was interested in having the City annex the land here involved, it was merely one of many considerations which led the City to annex the area. The purposes which might have motivated the City in this annexation are of no consequence however in determining the legality of the annexation. Under the authorities hereinafter cited, the only requirement for a legal annexation by a home rule city such as San Antonio in Texas is that the territory (1) is adjacent to the City and (2) not included within the boundaries of any other municipality. Both of these conditions existed here. (App. A-8)

The Petitioners main concern as to these Respondents appears to be that their land will be damaged by the limitations that the City may put on the use of Petitioners' land. Such a limitation of use can only result from a zoning ordinance adopted by the City. Since such an ordinance has not yet been passed by the City, the Petitioners' complaint in that regard is premature. (App. A-6 - A-7)

ARGUMENT

Jurisdiction - No Substantial Constitutional Basis Exists for Jurisdiction

The Petitioners have failed to assert any real basis for federal jurisdiction over the matters alleged in Petitioners' complaint. The trial court recognized that the law is well-settled with respect to the allegations made by Petitioners. Incorporated Committee of City of Hills And Dales, Texas, Victor Engel, Helotes, et al. vs. Gerald Henckel, City of San Antonio. Civil No. SA 71 CA 206, January 12, 1972, Civil No. 72-1652 (5th Cir. 1972) Affirmed Local Rule 21 and Hammonds vs. City of Corpus Christi, Texas, 343 F2d 162 (5th Cir. 1965), cert. denied 382 U.S. 837 (1965), and the mere assertion of federal statutes and provisions of the Constitution by the Petitioners did not create a basis for federal jurisdiction, Stanturf vs. Sipes, 335 F2d 224 (8th Cir. 1964) cert. denied 85 S.Ct. 676, 379 U.S. 977, 13 L.Ed. 567 (1964).

A claim under a question of constitutionality must be substantial and not frivolous or a matter of form. A claim is not substantial if it is without merit or foreclosed by prior authoritative decisions. Skokomish Indian Tribe vs. France, 269 F2d 555 (9th Cir. 1959) W. Barron & A. Holtzoff & C. Wright, Federal Practice and Procedure, §25, 123. (Rules Edition 1961).

The trial court in this case after hearing testimony found that the Petitioners had failed in all things to prove a constitutional claim (Appendix p. A-20). Thus the trial court properly, after giving the Petitioners an opportunity to be heard, determined that there was no constitutional question and dismissed the case, in compliance with Harmon vs. Superior Court of State of California in and for Los Angeles County, 307 F2d 796 (9th Cir. 1962), and Clark vs. Paul, Inc., 306 U.S. 583, 59 S.Ct. 744, 83 L.Ed. 1001 (1939).

RESPONSE TO QUESTIONS RAISED BY PETITIONERS

(1) Does a Right Exist to Sue the U. S. Air Force for Damages?

The U. S. Attorney will respond and address himself to this point.

(2) Must Zoning be Completed after Annexation before a Remedy exists in the Courts?

The Petitioners complain of alleged illegal zoning. No zoning ordinance has been passed, and at best the relief requested is premature. Under the circumstances of the present case, the alleged injury to the Petitioners, the imposition of future restrictive zoning, has not ripened and is certainly not imminent. The Petitioners would still have a cause of action under eminent domain proceedings or compensation for unlawful zoning if the action ever ripens.

The annexation by the City was procedurally proper and lawful under Texas law.

Hammonds vs. City of Corpus Christi, Texas, 343 F2d 162 (5th Cir. 1965), cert. denied 382 U.S. 837 (1965). Incorporated Committee of City of Hills and Dales vs. Henckel, 461 F2d 847 (5th Cir. 1972, Affirmed without opinion under Local Rule 21).

Petitioners allege damages to their property based on a taking of private property. The basic method of taking alleged by Petitioners is restrictive zoning. No zoning has been accomplished by the City. As the trial court noted, "Even if such zoning were in progress adequate administrative remedies are available in the zoning process." (Appendix p. A-20).

The Petitioners also allege inverse condemnation.

The contemplated condemnation proceedings alleged by the Petitioners are merely speculative. Again the Petitioners would have a remedy if such condemnation proceedings were in progress. Such proceedings would allow adequate administrative remedies.

Specifically, the trial court noted, "plaintiffs' complaint is premature at best." (Appendix p. A-20)

Petitioners cite the cases of U.S. vs. Causby, 66 S.Ct. 1062 (1946) and U.S. vs. C. M. Dow, 357 U.S. 17, 78 S.Ct. 1039

as authority for their claim for damages. The cases cited are condemnation cases, and have no applicability to the facts of the instant case.

In summary, the Fifth Circuit recognized the premature nature of the Petitioners' action, as well as the possibility that the injury, "might never ripen". Chacon vs. Granata, 515 F2d 922 (1975) (App. A-3).

(3) Does the City have the right to Annex without approval by the Voters?

Yes. Annexation of additional territory under Texas law is limited only to the extent that the territory be adjacent to the City, and not included within the boundaries of any other municipality. Hammonds vs. City of Corpus Christi, 343 F2d 162, (5th Cir. 1965), cert. denied, 382 U.S. 837 (1965).

The present case meets the test propounded under the well-settled and established law in this area. The Fifth Circuit has, "twice upheld annexations factually indistinguishable from this one." Hills and Dales vs. Henckel, supra., Hammonds vs. City of Corpus Christi, supra., quoted from Chacon vs. Granata, (Petitioners' App. A-8)

As the Fifth Circuit Court noted (Petitioners' App. A-5):

> "Where annexation of private land by city was lawful in its effect, motives of those who legislated it were beyond judicial scrutiny."

The court quoted from United States vs. Constantine, 296 U.S. 287, 299, (1935), "There is a wise and ancient doctrine that a court will not inquire into the motives of a legislative body or assume them to be wrongful."

Petitioners attempt to maintain that this case differs from the well-settled law in the area because it is concerned with deprivation of property rights through illegal zoning. However, in fact the territory which is the subject of this lawsuit has merely been annexed, and no zoning or condemnation proceedings have been completed. The case is on all fours with Hammonds and Hills and Dales. The Petitioners' allegations are merely futile attempts to raise issues that this court has previously rejected.

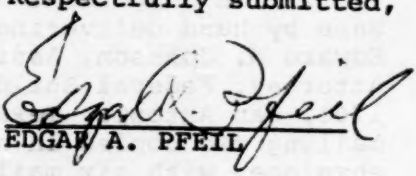
CONCLUSION AND PRAYER

The Petitioners are again attempting to invoke the jurisdiction of the court on the grounds that said annexation is a deprivation of property and did not comply with the concept of due process of law as set forth in the U. S. Constitution. This attempt comes on the heels of numerous decisions that have ruled that the federal court has no jurisdiction. Writ of Certiorari has twice been denied by this Supreme Court in cases of identical

character, Pan American Production Co. vs. Texas City, 303 S.W.2d 780, (Tex.Sup.Ct. 1957) Appeal dismissed 355 U. S. 603, Hammonds vs. City of Corpus Christi, supra.

The Fifth Circuit in its opinion has adequately addressed itself to the legal relief requested by Petitioners. The disposition of such points against the contentions of the Petitioners are correct and Writ of Certiorari should be denied.

Respectfully submitted,



EDGAR A. PFEIL

JANE H. MACON

200 Main Plaza, Suite #103
San Antonio, Tx. 78205

ATTORNEYS FOR RESPONDENTS
SAM GRANATA AND CITY
OF SAN ANTONIO

CERTIFICATE

I, Edgar A. Pfeil, whose application is on file in the Admissions Office and who is to be admitted as a member of the Bar of the Supreme Court of the United States on October 14, 1975, representing the Respondents Sam Granata and City of San Antonio herein, do hereby certify that this Brief in Opposition has been served upon the following parties herein:

(1) On Petitioners by hand delivering three copies to Earle Cobb, Jr., 1665 Frost Tower, San Antonio, Texas, counsel of record for Petitioners, on this 6th day of October, 1975.

(2) On Respondent Randolph Air Force Base by hand delivering one copy to Edward M. Johnson, Assistant U. S. Attorney, Federal Building, P. O. Box 1701, San Antonio, Texas 78296, and by mailing two copies in a duly addressed envelope, with air mail postage prepaid, to the Solicitor General, Department of Justice, Washington, D.C. 20530, counsel of record for Respondent Randolph Air Force Base, on this 6th day of October, 1975.

I further certify that all parties required to be served have been served.

Edgar A. Pfeil

EDGAR A. PFEIL